

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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KHALED MOHAMED,

Plaintiff,

v.

SANOFI-AVENTIS PHARMACEUTICALS,  
SANOFI-SYNTHELABO GROUP SEPARATION  
PAY PLAN and SANOFI-SYNTHELABO  
SEPARATION PAY PLAN COMMITTEE

Defendants.  
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06 Civ. 1504

Opinion & Order

**BARBARA S. JONES**  
**UNITED STATES DISTRICT JUDGE**

On March 30, 2010, Plaintiff Khaled Mohamed filed a motion for attorneys' fees and costs pursuant to section 502(g)(1) of the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1132(g)(1). Plaintiff's motion is DENIED.

On December 12, 2009, the Court issued an Opinion and Order that: (1) remanded to the Sanofi-Synthelabo Separation Pay Plan Committee (the "Committee") Plaintiff's claim that Defendants denied him benefits to which he was entitled in violation of ERISA; (2) dismissed Plaintiff's ERISA section 510 claim for retaliatory termination; (3) granted Plaintiff's motion for summary judgment on his claim that the Committee violated ERISA section 502(c)(1) and awarded Plaintiff a \$1,200 penalty for that violation; (4) dismissed Plaintiff's claim that Defendants' counterclaims were retaliatory in violation of ERISA section

510; and (5) denied Plaintiff's motion for judgment as a matter of law on Defendants' counterclaims and denied Defendants' motion for summary judgment and Plaintiff's cross-motion for summary judgment on the counterclaims.

According to a letter from counsel for Plaintiff dated May 26, 2010, the Committee again denied Plaintiff's claim for benefits on May 18, 2010. Plaintiff's counsel states that the Committee's decision was not clear as to whether there were opportunities for further administrative appeals and that the Committee had not yet responded to Plaintiff's May 21, 2010 request for clarification.

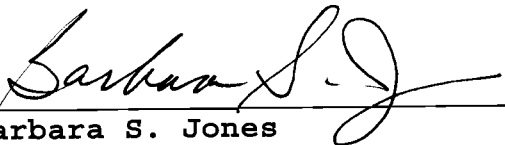
Defendants oppose Plaintiff's motion, arguing that it is premature, that Plaintiff cannot show that he is entitled to attorneys' fees or costs, and that Plaintiff's calculation of fees is unreasonable.

The Court agrees with Defendants that Plaintiff's motion is premature. Under ERISA, the Court may award reasonable attorneys' fees and costs to either party in its sole discretion. See 29 U.S.C. § 1132(g)(1). However, awarding attorneys' fees and costs to Plaintiff at this juncture, before a final determination has been made with respect to Plaintiff's eligibility for severance benefits, would be premature. See Jones v. UNUM Life Ins. Co. of Am., No. 99-7173, 14 Fed. Appx. 44, 45-46 (2d Cir. June 28, 2001) (affirming district court's

denial of motion for attorneys' fees because district court had remanded a claim and therefore motion was premature); Viglietta v. Met. Life Ins. Co. of Am., No. 04 Civ. 3874(LAK), 2005 WL 5253336 (S.D.N.Y. Sept. 2, 2005) ("Because the Court recommends remanding Plaintiff's claim to the administrator for a 'full and fair review,' it would be premature to award attorney's fees at this time."); Shutts v. First Unum Life Ins. Co. of Am., 310 F. Supp. 2d 489, 501 (N.D.N.Y. 2004) (holding that "it is premature to address the issue [of attorneys' fees] at this juncture since the Court must remand the matter to Defendant"); Bennett v. Gill & Duffus Chems., Inc., No. 85 Civ. 4119(LBS), 1987 WL 34256, \*5 (S.D.N.Y. Dec. 29, 1987) (remanding severance benefits decision to plan administrator and holding that "[i]n view of this decision, we find it premature to consider . . . the parties' claims for attorney's fees").

For this reason, Plaintiff's motion for attorneys' fees and costs is denied. Plaintiff may renew its motion upon the conclusion of administrative proceedings and any judicial review of those proceedings.

SO ORDERED:

  
Barbara S. Jones  
UNITED STATES DISTRICT JUDGE

Dated: New York, New York  
July 19, 2010